1. SINGLE BENCH

C.S. 100/—

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 3691 OF 2006

PETITIONER: Bhagirathi, son of Ramnarayan, age 32 yrs resident of Gram Penari, Post-Devadhand, Tehsil Manendragarh, District Koriya

VS

RESPONDENTS:

1. State of Chhattisgarh, through the Secretary, Ministry of Panchayat & Rural Development, D.K.S. Bhawan, Raipur.
2. The Secretary, Ministry of Panchayat & Rural Development, D.K.S. Bhawan, Raipur.
3. The Collector, Koriya, Baikunthpur.
4. T. Hemant Kumar Naidu, son of Not Known, resident of Professor Colony, Raipur.

P.R. No. 3757/06
Presented by Shri M.L. Soket
dated 20.12.06

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WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3691 of 2006

Petitioner : Bhagirathi

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri B.P. Sharma, counsel for the petitioner.

Shri N.K. Agrawal, Deputy Advocate General for the State.

ORAL ORDER

(28th July, 2006)

1. The petitioner was elected as Sarpanch of Gram Panchayat Penari, Tehsil Manendragarh, District Koria. In the election held in the year 2004, the respondent No.3 vide order dated 18.8.2005 (Annexure P-3) disqualified the petitioner, on the ground of having more than two living children after 26th January, 2001, under Section 36 (1) (m) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993.

2. Being aggrieved, the petitioner filed an Appeal before the Director, Panchayat, State of Chhattisgarh, Raipur, under Section 36 (4) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. According to learned counsel for the petitioner, the Appeal has been admitted. However, the Director declined to grant interim relief of the said order dated 18.8.2005 (Annexure P-3) passed by the respondent No.3.

3. The petitioner further preferred the revision before the Secretary, Government of Chhattisgarh, Panchayat and Rural Development Department. The Secretary by order dated 6.12.2005 (Annexure P-6) granted stay of the order dated 18.8.2005

(Annexure P-3) passed by the respondent No.3. The interim order so granted was vacated by order dated 19.6.2006 (Annexure P-1).

4. Shri B.P. Sharma, learned counsel appearing for the petitioner, submits that the impugned order dated 19.6.2006 (Annexure P-1) was passed under the threat of some person, who had nothing to do with the matter, for going under hunger strike and commit suicide.

5. On reading of the impugned order, it appears that the Secretary has not passed order on the basis of any threat issued by one Shri T. Hemant Kumar Naidu, but on merit. Grant of interim relief in favour of the petitioner amounts to grant of final relief which cannot be granted during pendency of the Appeal. The provisions of Section 36 (1) (m) of the Panchayat Adhiniyam is very clear, even otherwise the petitioner has not established that the petitioner would suffer any irreparable loss or balance of convenience is in favour of the petitioner.

6. For the reasons stated above, this petition is devoid of merit and deserves to be dismissed. However, in the facts and circumstances of the case when the matter is pending before Appellate Authority, the Director, Panchayat, is directed to consider the Appeal on merit in accordance with law without being influenced by the observations made by the Secretary in his order dated 19.6.2006 (Annexure P-1) passed in Revision Case No. 215/A-Nya. Pan./2004-2005.

Sd/-
Satish K. Agnihotri
Judge